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Asset legal review

How Coinbase thinks about the legal review of new assets

Coinbase conducts a legal review that analyzes potential assets under applicable securities laws, including U.S. securities laws as regulated by the Securities and Exchange Commission (the SEC). We inform our analysis using, among other resources, the SEC Staff's [Framework for "Investment Contract" Analysis of Digital Assets](#). In addition, we take into consideration new developments in the law and the regulatory landscape, including staff commentary, the results of enforcement actions and settlements, court rulings, and new trends in the crypto industry itself (the SEC has updated its framework to take into account trends in popular consensus models such as proof-of-stake, stablecoins, and DeFi).

There is significant uncertainty as to how crypto assets should be characterized under securities laws. In order to advance the crypto economy while complying with laws for which the application is unclear, Coinbase and other industry leaders formed the [Crypto Ratings Council](#) (the CRC). The CRC has created an [open-sourced framework](#) (available to asset project teams) for analyzing the factors most likely to play a role in determining whether an asset will be deemed to be a security.

In addition to our work with the CRC, Coinbase has an independent role and obligation under which we analyze assets being considered for listing as best we can given the existing state of the law, including regulatory and informational guidance, enforcement actions, and case law:

- **Factual Diligence:** Coinbase collects information from a number of sources, including from the asset project team and publicly available information, to best understand the facts surrounding the asset's function, current state, and history.
- **Howey Analysis for Investment Contracts:** As part of our process, Coinbase performs an analysis under the Howey line of securities cases to determine the likelihood that an asset qualifies as an investment contract under U.S. securities laws. This analysis represents our best effort to interpret and comply with a dynamic and uncertain regulatory landscape, and as such our analysis is multifactorial and takes into consideration a wide array of facts and circumstances as informed by our factual diligence. As the regulatory landscape continues to evolve, so does our process, and we constantly strive to make changes to keep up with new developments in regulatory guidance, changes in black letter law, and applicable results from enforcement actions, settlements, and judgments.
- **Other Securities Analysis:** When appropriate, Coinbase will also evaluate whether the asset has characteristics of other instruments that may be deemed to be securities, such as a note or stock. For example, we may evaluate to what extent an asset is identified or marketed as an investment and whether the issuer filed a registration statement or claimed an exemption to applicable securities laws. Additional review also considers whether the asset has features resembling a class of financial instruments known as derivatives.

Takeaways

The industry for crypto assets moves fast, raising novel legal issues for industry participants to negotiate.

While we use our best efforts to comply in such an environment, we understand that this presents many questions for asset development teams as to how Coinbase conducts its legal analysis.

We strongly recommend that asset issuers and development teams seek their own qualified legal counsel to help navigate these uncertain waters, and to place their assets and networks in the best possible position for regulatory compliance when seeking or preparing for a listing application on Coinbase.

And as always, the information presented here is not legal advice; we provide this for general informational purposes only, including any links to third-party websites.


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